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C O N F I D E N T I A L SECTION 01 OF 02 ZAGREB 000272

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TAGS: PREL PGOV KAWC ICTY HR

SUBJECT: JUSTICE MINISTER LAYS OUT GOC VIEWS ON ICTY
COOPERATION

REF: ZAGREB 194

Classified By: Rick Holtzapple, PolEcon Counselor, for reasons 1.4 (b)
& (d).

¶1. (C) SUMMARY: Justice Minister Simonovic says Croatia has been unable to find any more of the 23 documents (or types of documents) sought by the ICTY Prosecutor, and which the GoC agrees once existed but says have now disappeared. The GoC has reconstructed the chain of custody for these documents, to try and pinpoint when and how they disappeared. The information they have compiled indicates that Gotovina and his defense team were directly involved in the documents' disappearance. Simonovic acknowledged, however, that this information is unlikely to satisfy ICTY Prosecutor Brammertz.

The GoC is instead pinning its hopes on convincing the ICTY judges to rule that Croatia has done all that it can to cooperate with the Prosecutor. END SUMMARY.

NO PROGRESS IN FINDING THE MISSING DOCUMENTS

¶2. (C) In a May 8 meeting with Amb. Bradtke and visiting S/WCI staffer Julie Vibul-Jolles, Croatian Justice Minister Ivan Simonovic described the GoC's perspective of its on-going arguments with ICTY Prosecutor Serge Brammertz about missing documents for the Gotovina trial in The Hague. Simonovic opened by saying the GoC recognized that the issue remained a "serious problem." Croatia, Simonovic said, was now a "hostage" of Gotovina's defense team and the ICTY Office of the Prosecutor (OTP).

¶3. (C) Simonovic said that the OTP had originally sought 158 categories of documents, and Croatia, from the GoC's perspective, provided either the documents themselves or their substitutes (i.e., documents that were not precisely as described by the OTP because of different chains of command) in 88 percent of the cases. In some cases, despite the OTP's expectation that certain documents must have been produced during Operation Storm in 1991, the documents sought were never created. In some cases that was because the chain of command was different from what the OTP believed, and in other cases because Croatian forces simply used older versions of some orders, and did not produce any new documents for Storm.

BUT CHAIN OF CUSTODY INFORMATION POINTS BLAME AT GOTOVINA

¶4. (C) Simonovic added, however, that some key, "very relevant", documents are indeed missing. The GoC had produced a list of 23 documents which Croatia agreed had existed, and are relevant to the prosecution. But the GoC's efforts to find these documents, including interviews with over 200 persons, had managed to find only three of the 23 documents. And even these three, Simonovic said, were rejected by Brammertz (reftel).

¶5. (C) Simonovic said the GoC had now established a chain of custody for these documents to determine how and when they

had disappeared. This investigation has produced some "embarrassing discoveries." The GoC has identified three separate periods -- 1995, 1999-2000 and just before the Gotovina trial began -- during which documents disappeared from the official files. In the most recent episode, the GoC had determined that members of Gotovina's defense team were involved, and three individuals (one of Gotovina's lawyers, and two members of the military) had been criminally charged.

Simonovic said that the episodes in 1995 and 1999-2000 had both involved Gotovina himself: in 1995 when he was researching for a book, and in 1999-2000 for a purported second book -- and when he was serving as Chief Inspector of the Army and had full access to the archives. The GoC has sought to interview Gotovina about the disappearance of the documents, but has received no response from Gotovina and no cooperation from his defense team.

¶6. (C) Simonovic said that Brammertz's response to the GoC investigation has been that it is good the GoC is investigating, but unless the documents are found he won't be satisfied. Brammertz tells the Croatians that the investigation should have been done years ago, and he is tired of being strung along. Simonovic said Brammertz "might be right about all that", but that there is no way to change the past, the GoC has now done a credible investigation, and has no options left.

CROATIA PINNING HOPES ON THE TRIAL CHAMBER

¶7. (C) Julie Jolles responded that the U.S. is also concerned about the situation and sees it as serious. We would very

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much like to see Croatia get past this hurdle with Brammertz.

As Minister Simonovic noted, Croatia's past record of obstructing the Prosecutor's work does not help Croatia as it tries to make its case now. She suggested Croatia consider other steps that could give its response to Brammertz more credibility, such as providing more details of who specifically had been performing the archive searches, or perhaps inviting an outside investigator in to be involved in the search.

¶8. (C) Simonovic said he still held out a small hope that in his next conversation with Brammertz the Prosecutor might finally accept Croatia's arguments. (NOTE: MoJ State Secretary Markotic told us on May 15 that Simonovic and Brammertz spoke on May 14, and Brammertz said he was "still not satisfied." Markotic added that Brammertz sent his written report to the UNSC on May 14, prior to making an oral presentation on June 4. Prior to that, Brammertz will be in Croatia for the regional prosecutor's conference which S/WCI Williamson will also attend. Brammertz and Simonovic are scheduled to meet on May 25. END NOTE.)

¶9. (C) As long as Brammertz continues to be dissatisfied with Croatia's performance, Simonovic said he saw only two possible ways forward for Croatia. First, the GOC has filed a 54ter request and is seeking a ruling by the Trial Chamber on the OTP's motion for a subpoena to Croatia regarding the documents. Simonovic said the GoC was confident that the bench would agree with Croatia's presentation of the situation. The other option would be to seek diplomatic and lobbying activities that would bolster Croatia's case. In that context, Simonovic said, he would consider whether bringing in an outside investigator or other steps might be helpful.

¶10. (C) Jolles noted that reliance on the Trial Chamber to solve the problem could be problematic. Even if the Trial Chamber were willing to rule on the motion, it was our sense this would take a long time, and lead to complications in Croatia's EU accession negotiations. One of the attractions of other options is that they might produce a good result more quickly. She said S/WCI stood ready to assist the GoC

however it could.

COMMENT

¶11. (C) It appears very unlikely that the Croatians will turn up any more of the documents in question, or at least enough of them to satisfy the Prosecutor. Therefore, the GoC does need to focus on demonstrating to Brammertz and EU officials who are watching this case closely that it has really done all that it can to try and find them. We hope they will have more ideas when they talk with S/WCI Ambassador Clint Williamson during his planned visit to Croatia at the end of May. END COMMENT.

BRADTKE